

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Public Safety and Homeland Security Bureau	)	PS Docket No. 09-14
Seeks Comment On Information Collection and	)	
Recommendations to Congress Regarding State	)	
911/E911 Fees and Expenditures	)	
	)	

**COMMENTS OF CTIA—THE WIRELESS ASSOCIATION®**

CTIA—The Wireless Association® (“CTIA”) hereby responds to the Public Notice of the Federal Communications Commission’s (“Commission”) Public Safety and Homeland Security Bureau’s seeking comment on its annual collection of information regarding fees collected by states and other jurisdictions to support 9-1-1 / Enhanced 9-1-1 (“E9-1-1”) services and the expenditure of such fees.<sup>1</sup> On behalf of millions of wireless consumers that pay billions in 9-1-1 fees and charges each year, CTIA supports and appreciates the Commission’s efforts to raise awareness about the appropriate use of those funds by state and local authorities to support our nation’s 9-1-1 emergency response system. CTIA supports the Commission’s proposals in the Public Notice to seek additional information from state and local governments about the use of collected 9-1-1 and E9-1-1 funds. In addition, the Commission should ensure that any new monitoring or enforcement procedures that it adopts or recommends to Congress are carefully designed to increase accountability in the use of 9-1-1 funds without creating any new burdens on consumers or the wireless industry.

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<sup>1</sup> Public Safety and Homeland Security Bureau Seeks Comment On Information Collection and Recommendations to Congress Regarding State 911/E911 Fees and Expenditures, PS Docket No. 09-14, *Public Notice*, DA 11-1859 (rel. Nov. 8, 2011) (“*Public Notice*”).

**I. MISDIRECTION OF 9-1-1 FUNDS IS A VIOLATION OF THE PUBLIC’S TRUST.**

CTIA and its wireless industry member companies share the Commission’s and Congress’s commitment to seeing that funds collected for 9-1-1 services are used appropriately. A robust and reliable 9-1-1 service is the centerpiece of our nation’s emergency communications system and is responsible for saving lives every day. Wireless carriers have long been active partners with, and ardent supporters of, the Public Safety community generally, and 9-1-1 services in particular. The wireless industry’s commitment to emergency communications is evidenced by the significant economic and technical resources expended to support E9-1-1 functionality across the nation; its close cooperation with Public Safety community representatives such as the National Emergency Number Association (“NENA”), The Association of Public-Safety Communications Officials – International (“APCO”), the Next Generation 9-1-1 Institute, state and local 9-1-1 authorities, and others to promote awareness and appropriate use of 9-1-1; and its active participation in the ongoing E9-1-1 and Next Generation 9-1-1 (“NG9-1-1”) standards development efforts. Indeed, today’s 9-1-1 system is increasingly dependent on wireless services, as nearly 400,000 wireless 9-1-1 calls are made every day and CTIA estimates that wireless carriers collect and remit more than \$2 billion a year in 9-1-1 fees and surcharges from wireless consumers to support state and local 9-1-1 services.<sup>2</sup>

As the collaboration between wireless and 9-1-1 services has solidified, the wireless industry has worked with state and local governments to develop common sense and innovative solutions to concerns about the application of 9-1-1 fees to different wireless service models, including post-paid and pre-paid. For example, CTIA and its member companies supported the

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<sup>2</sup> See CTIA-The Wireless Association®, Wireless Quick Facts, [http://www.ctia.org/media/industry\\_info/index.cfm/AID/10323](http://www.ctia.org/media/industry_info/index.cfm/AID/10323) (last visited Dec. 3, 2011).

National Conference of State Legislatures’ adoption of model state legislation to collect 9-1-1 fees on wireless pre-paid services at the “point of sale” to ensure states’ ability to collect 9-1-1 fees from pre-paid consumers. The “point of sale” model creates certainty and efficiency for state and local governments seeking 9-1-1 funds, maintains transparency about the use of the fee for consumers, and can be easily administered by numerous types of sellers of wireless prepaid services.

However, wireless providers’ good faith efforts to address the 9-1-1 funding concerns of state and local governments are undermined when state and local governments violate the public’s trust and put lives at risk by diverting critical resources from 9-1-1 services to unrelated programs. Wireless consumers pay billions of dollars every year with the understanding that these funds are going directly to support the critical 9-1-1 systems that they rely upon in their times of greatest need. It is essential that monies collected from the public for 9-1-1 purposes be used only to support the 9-1-1 emergency response communications systems for which they are intended, and not be misdirected to unrelated projects or to balance state and local budgets. Every dollar diverted from 9-1-1 uses breaks a promise to the public and puts lives at significant risk.

CTIA and the wireless industry support the Commission’s efforts to monitor the collection and expenditure of 9-1-1 funds by state and local governments, as instructed by Congress in the New and Emerging Technologies 911 Improvement Act of 2008 (“NET 911 Act”).<sup>3</sup> While the most recent Third Annual Report demonstrates that the situation may be improving, seven states still reported using some portion of their funds to support other

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<sup>3</sup> See New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (2008) (“NET 911 Act”).

programs.<sup>4</sup> CTIA and its wireless industry members are gravely disappointed to see any state disregard the best interests of its citizens by denying 9-1-1 authorities the critical resources they need to support their mission. Such conduct is irresponsible, unfair, and contrary to the public interest, and therefore should be discouraged.

## **II. CTIA SUPPORTS THE COMMISSION’S EFFORTS TO SHINE A LIGHT ON THE MISUSE OF 9-1-1 FUNDS BY STATES AND LOCALITIES.**

The Commission should use the full extent of the authority granted to it by Congress to identify and expose malfeasance by states and localities in the collection and use of 9-1-1 funds. The nationwide 16.3 percent average tax and fee rate on wireless services is more than twice the average 7.4 percent tax rate imposed on other general goods and services.<sup>5</sup> As wireless consumers must already bear other discriminatory taxes and fees levied by state and local governments, the wireless industry is keenly interested in protecting consumers by ensuring that state and local governments appropriately use the funds collected for 9-1-1 purposes. As many adults living at or near the federal poverty line rely exclusively on wireless communications, excessive taxation of wireless services can disproportionately affect the most vulnerable members of society.<sup>6</sup> As such, all taxes and fees placed on wireless services and paid by

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<sup>4</sup> See “Report to Congress On State Collection and Distribution of 911 and Enhanced 911 Fees and Charges” at ¶ 15 (rel. Nov. 1, 2011).

<sup>5</sup> Scott Mackey, *A Growing Burden: Taxes and Fees on Wireless Service*, State Tax Notes (Feb. 14, 2011) available at <http://www.ksefocus.com/wordpress-content/uploads/2011/02/2010-Tax-Study-Final-Tax-Notes-PDF.pdf> Method from COST, *50-State Study and Report on Telecommunications Taxation* (May 2005). Updated March 2011 by Scott Mackey, KSEPartners, LLP using state statutes and regulations.

<sup>6</sup> See Glenn Woroch, *The “Wireless Tax Premium” Harms American Consumers and Squanders the Potential of the Mobile Economy*, Georgetown Center for Business and Public Policy 12-13 (June 2011), available at [http://www.gcbpp.org/files/EPV/EPF\\_Woroch\\_WirelessTaxPremium\\_62011.pdf](http://www.gcbpp.org/files/EPV/EPF_Woroch_WirelessTaxPremium_62011.pdf).

wireless consumers should be monitored carefully, expended efficiently, and disbursed only for their publicly-stated purpose.

CTIA supports the Commission's proposals in the Public Notice to revise its annual information collection to seek additional detail about the use of collected 9-1-1 and E9-1-1 funds. These proposals are sensible means of acquiring more information from governments, consistent with the intent of Congress as expressed in the NET 911 Act. The purpose of the Commission's annual report to Congress is "[t]o ensure efficiency, transparency, and accountability in the collection and expenditure of a fee or charge for the support or implementation of 9-1-1 or enhanced 9-1-1 services."<sup>7</sup> Moreover, while the NET 911 Act preserved the ability of states and localities to levy a 9-1-1 fee on wireless consumers free from Commission interference, this protection was conditioned on the provision that "the fee or charge is obligated or expended only in support of 9-1-1 and enhanced 9-1-1 services, or enhancements of such services."<sup>8</sup> To ensure that the intentions of Congress are being realized, the Commission should seek detailed information about the practices of state and local governments with respect to the collection and expenditure of 9-1-1 funds.

The modest expansions to the information collection proposed by the Commission are highly relevant to the use of 9-1-1 funds and should place little additional burden on the governments being surveyed. Seeking statements from state and local governments describing enforcement and other corrective action taken in connection with 9-1-1 funding oversight procedures<sup>9</sup> and identifying with specificity all activities, programs, and organizations for which

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<sup>7</sup> NET 911 Act § 101.

<sup>8</sup> *Id.*

<sup>9</sup> *Public Notice* at 3.

9-1-1 funds were used<sup>10</sup> should provide transparency that states and localities are being completely forthcoming about their usage of 9-1-1 funds. Additionally, the information necessary to respond to these requests flows naturally from existing survey questions concerning the amounts of funds used for 9-1-1/E9-1-1 or other appropriately designated purposes, the amount of funds used for non-designated purposes, and a description of existing oversight procedures.

CTIA also agrees that the Commission should inquire specifically about expenditures for NG9-1-1. NG9-1-1 funding is a crucial issue identified by the Commission and others,<sup>11</sup> and may result in substantial new amounts of federal aid passing to the states. Just as with 9-1-1 and E9-1-1- support, it will be essential to monitor closely the use of these funds.

### **III. ANY NEW MEASURES TAKEN SHOULD BE CAREFULLY CRAFTED TO IDENTIFY AND ADDRESS THE ROOT OF THE 9-1-1 FUNDING PROBLEM.**

The Commission should ensure that any new monitoring or enforcement procedures that it adopts or recommends are carefully designed to increase accountability in the use of 9-1-1 funds without creating any new burdens on consumers or the wireless industry. To this end, new information disclosures adopted by the Commission or requested of Congress should be directed at the parties responsible for overseeing the collection and use of 9-1-1 funds. The Commission should encourage state and local governments to undertake regular audits of their 9-1-1 funding operations to ensure such funds are used for their intended purpose. While the current

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<sup>10</sup> *Public Notice* at 3.

<sup>11</sup> *See, e.g.,* Public Safety and Homeland Security Bureau, “A Next Generation 911 Cost Study: A Basis for Public Funding Essential to Bringing a Nationwide Next Generation 911 Network to America’s Communications Users and First Responders,” White Paper (Sept. 2011) *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-309744A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-309744A1.pdf) (“PSHSB NG 911 Cost Study”); *see also* Working Group 4B of the Commission’s Communications Security, Reliability and Interoperability Council (CSRIC), Final Report, 4-5 (March 2011) *available at* <http://transition.fcc.gov/pshs/docs/csrc/CSRIC-WG4B-Final-Report.pdf>.

information collection focuses only on states, localities may also be culpable for levying 9-1-1 fees and subsequently misusing those revenues without the awareness or complicity of state governments. It is crucial that local governments be included in any future disclosure or monitoring mechanisms.

At the same time, the Commission should not consider additional disclosure or reporting obligations for the wireless industry. Wireless service providers already are required to conform to clear and strong requirements to provide truthful descriptions of the line items on their customers' bills. Moreover, once a carrier collects 9-1-1 fees from their customers and remits them to the state or locality, the carrier has no visibility into how the fees are disbursed. State and local governments should be held to the same standard as carriers when it comes to providing truthful descriptions. There also is no claim, let alone evidence, that consumers or the wireless industry are failing to uphold their end of the 9-1-1 funding obligation. As discussed above, wireless carriers remit billions of dollars per year in federal, state, and local 9-1-1 fees; the problem is that too often this money never makes it to the Public Safety Answering Points and 9-1-1 authorities for which it was intended.

CTIA also agrees with the Commission's suggestion that a more significant federal enforcement mechanism may be necessary to deter the misuse of 9-1-1 funds.<sup>12</sup> Simply identifying the states and localities that are misusing 9-1-1 funds is not sufficient to prevent this behavior. In addition, prohibiting or revoking federal grants for 9-1-1 services to states that misappropriate 9-1-1 funds has not proven to be a serious deterrent, as too many states quickly conclude that they can obtain substantially greater monies by raiding these funds than they forfeit in federal 9-1-1 grants. While CTIA does not propose any particular mechanisms at this time,

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<sup>12</sup> *Public Notice* at 4.

federal enforcement that ensures states and localities adhere to a consistent and technology neutral 9-1-1 funding system is critical to the goal of a ubiquitous 9-1-1 emergency response system. The Commission should consider recommending to Congress that stricter federal enforcement procedures are necessary to meet the public's expectations.

Ultimately, there are still many questions left to be answered regarding how to design and implement adequate and sustainable funding mechanisms for 9-1-1 and NG9-1-1. To better understand the scope of the current 9-1-1 and future NG9-1-1 funding challenges and to develop appropriate solutions, CTIA supports the conclusion of CSRIC Working Group 4B that a Blue Ribbon Panel be formed to address 9-1-1 funding issues.<sup>13</sup> As envisioned by CSRIC, this panel would examine funding needs and current funding sources, make recommendations regarding the creation of permanent funding mechanisms, and develop strategies to protect funding from misuse.<sup>14</sup> The Bureau's September 2011 White Paper on a NG9-1-1 cost study forms a good starting point for these efforts,<sup>15</sup> but significant work remains to be done that will require the coordination of representatives from all aspects of the diverse 9-1-1 stakeholder community.

#### **IV. CONCLUSION**

Misuse of funds collected for 9-1-1 and E9-1-1 purposes represents a serious and irresponsible violation of the public trust that could have real consequences in terms of decreased emergency response capabilities and increased risk to life. While there is some evidence that the situation is improving, no amount of 9-1-1 fund diversion is acceptable. Particularly as the country begins the complex and resource intensive transition to a NG9-1-1 system, it is essential

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<sup>13</sup> CSRIC Working Group 4B Final Report *supra* n.11.

<sup>14</sup> *Id.*

<sup>15</sup> *See* PSHSB NG 911 Cost Study.



that these fundamental challenges be resolved. CTIA supports the Commission's efforts to increase transparency in the use of 9-1-1 funds by states and localities and to explore other innovative options for promoting consistency and reliability in 9-1-1 funding.

Respectfully submitted,

By: /s/ Brian M. Josef

Brian M. Josef  
Assistant Vice President,  
Regulatory Affairs

Michael F. Altschul  
Senior Vice President, General Counsel

Christopher Guttman-McCabe  
Vice President, Regulatory Affairs

Matthew B. Gerst  
Counsel, External & State Affairs

CTIA – The Wireless Association®  
1400 16<sup>th</sup> Street, NW, Suite 600  
Washington, D.C. 20036  
(202) 785-0081

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